

Office of the Senate Majority Leader  
Senator Scott Fitzgerald  
Room 211 South  
Madison, WI 53707

Testimony to the Senate Committee on the Judiciary  
*Speaking in Favor of SB 478*

Chairman Zipperer, members of the Senate Committee on the Judiciary, thank you for allowing me to speak on behalf of SB 478, relating to: giving notice of, and providing assistance after, a motor vehicle accident and providing a penalty.

My name is CJ Szafir; I am a staffer for Senator Scott Fitzgerald. I am here to speak in favor of SB 478 on behalf of Senator Fitzgerald, who has co-sponsored the bill – along with Senator Olson. A constituent of ours, Dodge County Sheriff Todd Nehls, approached our office several months ago about passing a bill that would increase the penalties for failure to report a motor vehicle accident. Sheriff Nehls was unable to attend this hearing, but he did send a written testimony. His testimony details the problems with the current law, and why changes are needed. In addition, Dodge County Deputy Kevin Homan and Deputy Dale Schmidt will also speak in favor this bill.

Under current law, Wisconsin Statute 346.70, operators of a vehicle that cause an accident, which results in personal injury or damage to property of at least \$1,000, must report the accident to law enforcement by the quickest means of communication. Violators of the law will be fined \$40 - \$200.

Deputy Homan and Deputy Schmidt will comment more about the problems with the current law. In short, because the penalty is so low and the penalties for an OWI are so high, there is an incentive for individuals, who were driving drunk and cause an accident, to not report the accident. Sheriff Nehls outlined numerous examples to us of when a driver, who was driving drunk, gets into an accident, and then, rather than calling law enforcement, the driver calls a friend who picks up the driver in order to avoid law enforcement. Law enforcement will eventually locate the accident, and while the driver is sobering up at a friend's house, law enforcement will spend taxpayer money and resources looking for the driver.

SB 478 will incentivize individuals to comply with the failure to report statute. SB 478 will increase the penalties for failing to report an accident to \$200-\$500 for the first offense, and \$300 - \$500 for the second offense. In addition, the DOT will assess six demerit points against the driving record of the vehicle operator. Moreover, SB 478 will penalize both the operator *and the occupant* of the motor vehicle if there is no report of an accident.

In addition, the bill places reporting requirements on individuals who render assistance at an accident. If an individual is in the business of rendering assistance at an accident, such as towing or vehicle repair, then, before rendering assistance, the individual must be contacted by law enforcement and have approval from law enforcement. An exception is that if removal is necessary to "avoid imminent danger." Also, if an individual, such as a friend, is helping out at an accident, then before helping, the individual must first contact law enforcement or be able to verify that law enforcement was already reported. Exceptions include any person who is in the profession of rendering medical assistance, not related or close to the operator/occupant of the vehicle, or who does not know that there was an accident.

Thank you for your time, and I would be happy to answer any questions you have.

Committee Members,

Thank you for your time. My name is Dale Schmidt. I am also a deputy sheriff with the Dodge County Sheriff's Department and have been a law enforcement officer for 12 years. I have recently been promoted to 3<sup>rd</sup> Shift Patrol Sergeant and begin those duties in the next couple weeks. I am also a Standardized Field Sobriety Test Instructor and a Drug Recognition Expert. Both of these certifications are directly related to impaired driving.

I would like to take the time which you have given me to share with you some details about the resources which go into investigating a crash which involves a driver who has fled the scene. A dispatcher will receive information about a crash that has occurred via 911. They will get the pertinent information about location, number of vehicles, occupants, and injuries. When someone fails to report, many times it is a neighbor who calls in the crash that woke them up out of a dead sleep. They usually do not get all the information which we need to appropriately respond, as they either are some distance away from the crash, or they are many times afraid to go out to the scene.

A dispatcher will usually send 2 deputies to investigate the crash and provide the necessary emergency care. These deputies are often coming from a long distance away and are responding in emergency mode, traveling at speeds above the speed limit. They do this because they do not know if anyone is injured, trapped, or even killed. The dispatcher may also send an ambulance or the fire department to the scene if there is suspected injury. This is done, only to find once they arrive, that there is no one around and all those resources have been tied up when they may have been needed elsewhere.

The investigating deputy will likely ask dispatch to contact the area hospitals to check for anyone who may have gone to the hospital for treatment. A vehicle registration check will be done to find the registered owner. It will then be the task of the dispatcher to search for phone numbers and to attempt contact with those registered owners to find out who was driving and check the welfare of the occupants of the vehicle. If no contact can be made attempts will be made to make personal contact at the registered owner's residence. Many times the lights will be on when we get there, but as soon as we ring the door bell, those lights magically go out. No one answers the door and we have no further recourse to check on the occupants or investigate the crash. If we do make contact, many times they try drink as much as they can before we get there, attempting to convince us that they were not drinking before the crash.

Other times, we find that the registered owner no longer lives at that address and we must further check other resources to find a more current address, often times because they fail to change their address at the Department of Motor Vehicles as required by law.

In the next day or two, the driver will many times come in to report the crash. As Deputy Homan indicated, this will be after they have sobered up, and they will have some fabricated story about what happened. This is frustrating because we know that they had been drinking, but can not arrest them for the real reason which the crash occurred, Impaired Driving. We are then forced to settle with issuing the Failure to Notify Police of Accident and simple traffic offenses which often carry no license suspension or even loss of demerit points.

Here are a few examples real traffic crashes which I have investigated over the past couple years:

November 7, 2010

At about 2am, I was given information about a person who left a gas station and he was so intoxicated that he could not get his credit card back into his wallet without the help of the clerk. She said he stumbled out and got into a truck and left. I checked the area and was unable to find the vehicle matching the description.

At 5:32am we received a report of a crash a few miles from the gas station. The vehicle matched the earlier description I received. The registered owner was from Illinois and our dispatchers were force to contact numerous agencies in Illinois to obtain an accurate phone number, however, no contact could be made.

At 6:45am, 4 hours and 45 minutes after the initial report from the gas station, the driver returned to the scene. I could still smell the odor of intoxicant on him and after administering field sobriety tests, he was arrested for OWI. His statements to me where that he crashed only 45 minutes prior and that he walked 8-10 miles to his friend's house. He said he couldn't find any houses to stop at to report the crash.

The driver's blood test at 7:37am was still 0.092. With an average person having alcohol elimination rate of 0.015 an hour, the driver likely had an alcohol concentration of 0.18 when he left the gas station at 2am.

This driver was fortunately able to be arrested for OWI even though he waited almost 5 after the crash to show up back at the scene.

At 2:05am on October 21, 2012, I was dispatched to a crash reported by neighbor near Fox Lake. She said she saw the occupants get picked up by someone else. I arrived and located vehicle rolled over in the ditch and I saw an open bottle of Coors Light inside. Waupun Police responded to the registered owner's residence to find driver. The lights and the TV were on but no one answered the door.

At 10:55am the driver, made contact with another deputy. He admitted drinking and would not give a reason his failure to report. He said when he got home he drank 2 beers to calm himself and he went to bed. The deputy smelled alcohol and obtained a PBT sample of 0.031. With the same average elimination rate of 0.015, the estimated alcohol

concentration at the time of the crash would have been about 0.166. He was cited for "Fail to maintain control of vehicle" "Open Intoxicants in MV" and "Fail to Notify Police of Accident".

Finally at 12:49 am on November, 25, 2011, I was again dispatched to a crash near Beaver Dam. When I arrived I saw the driver had driven through a road closed sign at a high rate of speed and he struck a large construction dumpster causing significant damage to the entire vehicle. The steering wheel was bent, there was blood in and around the car, and there was alcohol inside. The driver fled the scene and there was a blood trail going down the road. We searched the area for about 30 minutes. The Beaver Dam police department tied up 2 officers searching several residences in an attempt to locate the driver with no success. Hospitals were again contacted and the Crash Investigation Team was called in. The driver's girlfriend told us that he had been drinking prior to the crash.

Numerous messages were left for the registered owner on his voice mail but we were unable to locate him that night. 2 days later I received a voicemail from the owner saying he would turn himself in on Monday morning. On Monday morning, I attempted contact but he was not home. I tried contacting him at his employer and I was told he would be out of town for a week. I finally made contact with him via phone and he refused to tell me what happened and said he would not be coming to talk to me. He was issued citations for "Failure to Notify Police of Accident" and "Fail to Obey Traffic Sign"

Finally I would like to talk about Tow Truck Companies who assist in covering up crashes. Our agency has had multiple dealings with a tow company who has removed vehicles from crash scenes without notifying police of the crash. We have only been notified of these incidents after an occupant in the crash needed medical treatment at the hospital and the hospital contacted us. Our agency has removed this company from our Tow List as a result, but we currently have no legal recourse to compel this company to report crashes before removing vehicles. My question is how many times have this company and others gotten away with this without our knowledge?

On behalf of the Sheriff Todd Nehls, the Dodge County Sheriff's Department, and law enforcement across the state, we thank you for considering amending this legislation and continuing to help us keep our states streets and highways safe for everyone to use.

## Members of the Committee – Support of SB 478

Over the course of the last 5 – 10 years, legislation has been passed which has significantly increased the penalties for impaired operation of a motor vehicle. An unforeseen reaction to the increases has been impaired drivers who now fail to report traffic crashes for fear of the significant penalty for Operation While Intoxicated 363.63 (1) (a) in which 1<sup>st</sup> offense penalties include \$1,185.50 fine, 6 demerit points, and a 6 month revocation vs. failure to notify police of an accident 346.70 (1) which the suspect is fined just \$263.50, receives no demerit points nor a license revocation. One can see why those who have been drinking have a motivation not to report. In 2011, the Dodge County Sheriffs Department issued 48 citations and 7 warnings for violations of 346.70 (1), many of these crashes have evidence of impaired driving, i.e. time of day, bottles/cans in vehicle, or no real reason why person would have left the roadway.

The current statutes fail to recognize what I feel is a newer definition of “immediate” in that 80%+ of all adults own a cellular telephone making it more practical to make immediate notification. No longer is one required to walk to the nearest farm house to use a telephone. The advent of cellular 911 also allows for injured parties to call 911 and law enforcement can immediately plot their location on a map allowing for a quicker emergency response.

On a weekly basis, the Dodge County Sheriff’s Department responds to serious motor vehicle crashes and locates no driver or occupants. Often, due to the callers’ description of the vehicle condition, 911 Dispatch will send fire, EMS and multiple units. The Dodge County emergency responder community is 99% volunteer and many of these incidents occur in the very early morning hours disrupting the sleep of our valued responders. Due to evidence such as blood and significant physical damage indicating violent crash, an extensive search is orchestrated for driver or passengers who may have been ejected or attempted to walk for help and may have collapsed well away from the scene. E911 dispatchers call local hospitals while other law enforcement officers respond to the registered downers address in an attempt to ascertain what occurred. It would not be out of the ordinary for an injured person to get home collapse in bed and not wake up the following morning. These efforts exhaust significant man power and exhaust valuable taxpayer resources.

After several hours of effort with no success, the most law enforcement can do is place a “hold” on the crashed vehicle which advises the towing company not to release the vehicle or any personal belongings until the owner comes forward to law enforcement to complete the traffic accident report (MV4000). The following day the owner/driver reports to the department with “his” version of events which include:

- I was not driving, I let a guy I just met drive me home and I do not know his name.
- I was not drinking.
- I swerved to miss hitting a deer and forgot to call.



- My car was stolen.
- I am a heavy sleeper and did not hear my phone ring when you called or I did not hear you knocking on my door.
- I would have called but my cell phone battery was dead.
- I was scared left the scene and then went home and drank to calm my nerves.

Often, others (friends and family) are summoned to pick up the suspect. They had time to call parents, friends, or even a tow truck but did not think of calling law enforcement. Those whom respond to assist these drivers face no penalty either even though they see no law enforcement officers at the scene when they pick to driver up.

On October 30, 2011, we had a young woman crash her car with three friends as occupants. Not only did she fail to report, she called her parents, they called a tow truck and removed the vehicle. We would not have known of the crash but the mother finally took the daughter to the hospital and they contacted us. Here is the message to me from my deputy:

***"Add another incident to your list from this weekend, only it was the operator, the operators mom (who picked up all four people including two juveniles who later had injuries) and dropped them off at home, a homeowner who allowed them all to "warm up" in his house after witnessing the crash, and a tow company who utilized two trucks to pull the vehicle out.....ALL without law enforcement present or being notified. Huge loopholes in this law. Thanks for looking into changing it!"***

Legislation needs to be drafted which will increase the penalty for failure to report accidents as well as legislation which will penalize those who aid and abet those who fail to report. From parents to towing companies, we can save significant dollars and resources the laws encourage reporting vs. fear of reporting.

Thank you for your assistance on making our state roads and highways a safer place.

Sincerely,

Todd M. Nehls  
Sheriff

**Szafir, Charles**

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**From:** Block, Cindy  
**Sent:** Monday, February 20, 2012 9:12 AM  
**To:** Szafir, Charles  
**Subject:** FW: SB 478  
**Attachments:** FTR Legislation.doc; Fail to Notify legislation.pdf

**From:** Dale Heeringa [mailto:dale@waupunpd.org]  
**Sent:** Monday, February 20, 2012 9:08 AM  
**To:** Block, Cindy  
**Subject:** FW: SB 478

Good morning. This is a follow up e-mail pertaining to Senate Bill SB-478. I would like to be considered a backer of this bill. Sheriff Todd Nehls of the Dodge County Sheriffs Dept. brought this information to my attention and I totally agree with it and back its need.

This is a situation that takes place in the City of Waupun and I'm thinking throughout the state where intoxicated drivers do not report accidents and leave the scene as the result of the fines/penalties being much lower than being arrested and convicted of OWI. This legislation would make violators think before driving intoxicated and if they do drive the law would hold them more accountable for their actions to a responsible degree.

Thank you for your time and efforts dealing with this important legislation.

Chief Dale Heeringa  
Waupun Police Department  
16 East Main Street  
Waupun, WI. 53963  
(920) 324-7903

SB 478

Members of the committee, thank you for your time in allowing me to speak with you today. My name is Kevin Homan; I have been a law enforcement officer for 17 years. I currently work for the Dodge County Sheriffs department. Besides my normal day shift patrol activities, I am also a certified Traffic Crash Reconstructionist. My Sheriff Todd Nehls proposed changes to the "failure to notify police of accident" statute. I am honored to reflect his thoughts as well as my own.

As you are all well aware, in the past years you have enacted legislation which has severely increased the penalties for someone convicted of Operating a motor vehicle while intoxicated, and I applaud you for that. But with the harsher penalties, people are more aware than ever of the potential loss of license, increased fines, interlock ignition devices, increase in insurance rates, and public shame. Because of these issues, people are more motivated than ever to not report and accident if they have been drinking. Drinking and driving is not the only reason people do not report and accident, there may be drivers licensing issues like revocation or suspension status, violation of Graduated Drivers Licensing, or fear of other citations.

Current statutes fail to recognize as my sheriff states "a newer definition of "immediate" notification". There are probably very few in this room who do not own 1, or 2 cellular telephones, making it even more feasible to make that immediate notification. When the original law was drafted, legislators realized that a person involved in an accident would have to walk to the nearest residence to try and make notification, that is no longer needed, and in fact, 911 technologies can immediately plot someone who calls via cellular telephone.

In 2001 Dodge County, patrol member issued 66 failures to notify citations, and gave 8 warnings for the same. A similar statute "hit and run" we issued 41 citations, and 1 warning, that's 116 citations, or just over 2 per week!!!! Those are alarming numbers, and that is just Dodge County.

I would like to describe to instances that I have been involved in in the last 6 months. The first was on a bright sunny Sunday morning. A rural resident in the s/w part of my county called in to report a vehicle lying on its side about 50 feet into a plowed field, and that no one was around. When I arrived, I saw the vehicle which had rolled several times, the windows were smashed out, debris was lying everywhere, yet no one was around. As I looked into the vehicle, I could still smell remnants of alcohol. Dispatch was able to locate a phone number for the registered owner and I spoke with her. She stated that her 25 year old son had the vehicle and that she had not spoken to him since the evening prior. I began to check the area for footprints, mom started calling friends, the operator was no where to be found. Mom informed me that her son had gone to a birthday party, but didn't drink, because they only had beer, and he didn't like beer. I told mom that I could still smell alcohol in the vehicle, but she claimed it would not have been HER son. I towed the vehicle, and placed a hold on it until I could speak to the driver. Two days later, he showed up at the sheriffs department, stated he swerved to miss the ever elusive deer, even I determined he was going to fast around an "S" curve. He stated he wasn't drinking, and of course with the given time frame, such impairment



could not be proven. When I asked him why he didn't call law enforcement, he stated he didn't think we were working!!!! This a 25 year old adult, lying and playing dumb to avoid prosecution. He was cited for "fail to Notify" and a speed violation.....a lot cheaper than an OWI conviction. This is just one of numerous instances that occur daily all over this great state. That incident was rather tame in that it only involved myself, my colleague Sgt Dale Schmidt, will describe other incidents which involve EMS, fire personnel, multiple deputies, and multiple jurisdictions.

Another incident involves kids racing on a rural road. The two cars collided at relatively low speeds, but all the parties involved called friends and family and pulled both vehicles out of the ditch and took the vehicles to a nearby farm. Law enforcement only found out about it when an ambulance had to respond hours later because one of the drivers had gone unconscious.

As a Crash Reconstructionist, I often get called in to a situation where there is someone injured badly, or even dead. The driver has been involved in a crash, and calls others to help them. Only later the driver or passengers realize the severity of their injuries and need to go to the hospital, there are instances where these injuries have been life threatening. No imagine trying to prove who the driver is hours or days after an incident, when everyone involved now has a head injury and "can't remember" anything.

Law enforcement hears every excuse in the book, from:

Someone else was driving  
My car was stolen  
Cell phone battery was dead  
I went home then started drinking to calm my nerves.  
I don't remember anything

Often the people involved will call family, and friends, tow trucks, but never law enforcement. These people should also be smart enough to notify us. But they just want to help out. Currently, those you respond to assist these drivers face no penalty for not notifying us.

As is the intent with any law and statute, the legal system is in place to hold people ACCOUNTABLE for their actions, or lack thereof. People are choosing to be held "less accountable" by not reporting accidents. They would much rather pay a "fail to notify police of accident" citation for \$263.50 than an O.W.I citation at \$1,185.50. legislation needs to be drafted which will increase the penalty for failing to report an accident, not only for those that were driving, but also those that aid abet these people. From parents to tow companies, we can save significant dollars and resources when the law encourages reporting vs., fear of reporting

Thank-you for trying to make our state roads and highway a safer place to drive.